

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6037

BILL NUMBER: SB 12

DATE PREPARED: Oct 5, 2001

BILL AMENDED:

SUBJECT: Child Pornography.

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FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill authorizes the seizure of equipment used in preparing or disseminating material in the commission of child exploitation or possession of child pornography. It raises child exploitation from a Class D felony to a Class C felony and increases the penalty for possessing material depicting or describing sexual conduct by a child less than 16 years old from a Class A misdemeanor to a Class D felony.

The bill provides that a person who makes available to another person a computer containing matter depicting sexual conduct by a child less than 18 years of age commits the crime of child exploitation and the bill specifies that the laws concerning child exploitation, possession of child pornography, and obscenity and pornography apply to digitized images. However, the bill provides that sending material to a minor over the Internet does not constitute disseminating to minors matter that is harmful to minors unless the matter, under statutory standards, is obscene or is child pornography, or unless the material, under statutory standards, is harmful to minors and is deliberately sent to a child the sender knows to be less than 18 years of age.

Effective Date: July 1, 2002.

Explanation of State Expenditures: The bill would increase the penalty for child exploitation from a Class D felony to a Class C felony. State expenditures would increase if an offender is incarcerated in a state prison for a longer period of time. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from two to eight years.

The bill would also increase the penalty for possessing child pornography from a Class A misdemeanor to a Class D felony. State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances.

The average expenditure to house an adult offender was \$20,700 in FY 1999. Individual facility expenditures ranged from \$14,936 to \$37,807. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost per offender for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily. The average length of stay in DOC facilities for all Class C felony offenders is approximately two years and the average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: No change would likely occur in state revenue as a result of increasing the penalty for child exploitation since criminal fines and court fees are the same for either Class D or C felonies.

However, more revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court for the crime of possessing child pornography. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are \$120.

Explanation of Local Expenditures: To the extent that the penalty is increased for possessing child pornography from a misdemeanor to a felony, the offender may be sentenced to state prison rather than to a county jail, and the costs to the county may be reduced. The maximum term of imprisonment for a Class A misdemeanor is up to one year. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

Explanation of Local Revenues: No additional revenues would be expected since the court fees for Class D and Class C felonies are both \$120, and the court fees for both misdemeanors and felonies are \$120.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs Association, Department of Correction.